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NEWS RELEASE

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Supreme Court Announces Changes In Habeas Corpus Procedures

Court Seeks More Counsel to Represent Death Row Inmates

San Francisco—The Supreme Court today announced several measures designed to encourage more counsel to provide representation for death row appellants in related habeas corpus matters.

“The number of persons on death row without appellate counsel has been declining,” stated Chief Justice Ronald M. George, discussing the new changes. “The backlog of cases in which appellate counsel are appointed but habeas corpus counsel have not yet been found, however, has proved harder to decrease. These are the latest in a number of steps we have taken to find more counsel willing and able to take these matters, and we intend to continue to seek more ways to expedite processing of these cases.”

Following consultations with the directors of the Habeas Corpus Resource Center and the California Appellate Project and the State Public Defender, the Supreme Court adopted measures that revise the time for filing a presumptively timely petition for writ of habeas corpus, relate to funding for investigation of habeas corpus claims, and facilitate the negotiation of a fixed-fee agreement between counsel and the court:

Time Extended For Habeas Corpus Petitions

1. Policy 3.1-1.2 of the Supreme Court Policies Regarding Cases Arising from Judgments of Death currently states that a petition for writ of habeas corpus is presumed timely if it is filed within 180 days after the final due date for the filing of the appellant’s reply brief in the direct appeal or 24 months after the appointment of habeas corpus counsel, whichever occurs later.

The heads of the various agencies stated that many counsel were reluctant

(over)

to accept appointment in “two-year” cases because of concerns about the press of time and the detrimental impact on their regular practice and cash-flow. This was confirmed by court staff who work with counsel interested in applying for appointment to these matters. The Habeas Corpus Resource Center, which has been appointed predominantly to two-year cases, also represented that it immediately would be able to accept a minimum of an additional 12 cases if the two-year period were extended to three years.

Based upon this information, the court adopted an amendment to the policies under which a petition for writ of habeas corpus will be presumed timely if it is filed within 180 days after the due date of the reply brief or within three years after the appointment of counsel, whichever occurs later.

Habeas Corpus Expense Policies Revised

2. Government Code section 68666, subdivision (b), and Supreme Court Policies Regarding Cases Arising from Judgments of Death, Compensation Standard 2.2-2.1, provide that the court will authorize up to \$25,000 for expenses relating to habeas corpus investigations. This figure was set at the time of the statute’s enactment in 1997 and has not been increased since that time. The court intends to pursue an amendment to the legislation removing the \$25,000 cap in order to allow the court to exercise more flexibility in compensating counsel based upon the increased costs of investigation.

3. The court announced that habeas corpus counsel will be compensated for record review at the rate of 50 pages per hour instead of 60 pages per hour, equivalent to the rate allowed for appellate counsel in the Supreme Court and for counsel handling appeals in the Courts of Appeal. This requires changes to Guideline 1.2 of the Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus proceedings.

Fixed Fee Factors Detailed

4. In order to assist in placing a fixed-fee value on proposed appointments made pursuant to the Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court, the court adopted new Guideline 1.3, which expressly sets forth the factors that will be considered in setting a fixed-fee, and new Guideline 1.4, which provides a suggested format and contents for a fixed-fee request. The four basic factors considered by the court are: complexity, difficulty, extraordinary costs, and time-intensiveness. Case-specific issues that may influence the applicability of these factors in a particular case are described in the guidelines, and a model letter based upon the new guideline will be provided to counsel by the Supreme Court’s Clerk’s Office to assist counsel in developing a fee request.

Access to Case-related Information Improved

5. In order to facilitate prospective habeas corpus counsel's access to case-related information that will assist counsel in determining whether to accept appointment in a case, the clerk's office will send a letter to appellate counsel asking that he or she provide such prospective habeas corpus counsel with access to documents necessary to assess the case, and noting that such review will fall under the attorney-client privilege, even if the potential counsel decides not to provide representation. Court staff and the capital-case agencies continue to meet to develop measures to increase the pool of qualified counsel willing to handle death-penalty-related matters in the Supreme Court in order to more promptly provide adequate and efficient representation and to reduce delay in the processing of these matters.

Copies of the changed policies and guidelines are attached.

**SUPREME COURT POLICIES REGARDING
CASES ARISING FROM JUDGMENTS OF DEATH**

Adopted by the Supreme Court effective June 6, 1989

**Amended effective September 28, 1989, September 19, 1990,
January 27, 1992, December 21, 1992, July 29, 1993,
December 22, 1993, June 20, 1996, January 22, 1997,
January 22, 1998, February 4, 1998, August 23, 2001,
December 19, 2001, January 16, 2002, July 17, 2002,
July 26, 2002, November 20, 2002, and November 30, 2005**

Policy 1. * * *

Policy 2. * * *

**Policy 3. Standards governing filing of habeas corpus petitions and
compensation of counsel in relation to such petitions**

* * *

1. Timeliness standards

1-1. * * *

1-1.1. A petition for a writ of habeas corpus will be presumed to be filed without substantial delay if it is filed within 180 days after the final due date for the filing of appellant's reply brief on the direct appeal or within ~~24~~ 36 months after appointment of habeas corpus counsel, whichever is later. *[As amended effective Sept. 19, 1990, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005.]*

1-1.2. A petition filed more than 180 days after the final due date for the filing of appellant's reply brief on the direct appeal, or more than ~~24~~ 36 months after appointment of habeas corpus counsel, whichever is later, may establish absence of substantial delay if it alleges with specificity facts showing the petition was filed within a reasonable time after petitioner or counsel (a) knew, or should have known, of facts supporting a claim and (b) became aware, or should have become aware, of the legal basis for the claim. *[As amended effective Sept. 19, 1990, July 29, 1993, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005.]*

Official Note No. 1 : The amendments to standards 1-1.1 and 1-1.2, effective July 17, 2002, changing "90 days" to "180 days," shall apply to all petitions for a writ of habeas corpus arising from a judgment of death that were pending before the Supreme Court on July 17, 2002, and to all such petitions filed after that date. *[Note added by Supreme Court order, July 26, 2002.]*

Official Note No. 2: The amendments to standards 1-1.1 and 1-1.2, effective November 30, 2005, changing “24 months” to “36 months,” shall apply to all petitions for a writ of habeas corpus arising from a judgment of death that were pending before the Supreme Court on November 30, 2005, and to all such petitions filed after that date. *[Note added by Supreme Court order, Nov. 30, 2005.]*

**PAYMENT GUIDELINES FOR APPOINTED COUNSEL
REPRESENTING INDIGENT CRIMINAL APPELLANTS
IN THE CALIFORNIA SUPREME COURT**

Revised December 22, 1993

**Amended effective September 1, 1995, January 1, 1997,
July 30, 1997, January 22, 1998, February 4, 1998,
January 16, 2002, August 25, 2004, October 1, 2005,
and November 30, 2005.**

I. INTRODUCTION

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II. REASONABLE COMPENSATION

A. – H. * * *

I. Special rules for capital cases The following rules apply to capital cases only:

* * *

(i) APPEAL

* * *

(ii) HABEAS CORPUS

a. Investigation and Presentation of Petition

(For cases in which appellate counsel also handles habeas corpus responsibilities):

Client communication related to

habeas corpus investigation: Up to 60 hours, as follows: Up to 30 hrs. in the first year after appointment; and up to 15 hrs. per year thereafter.

Investigate and present habeas corpus petition: 140-400 hrs.

(For cases in which separate appointed counsel handles habeas corpus responsibilities):

Client communication related to

habeas corpus investigation: Up to 70 hours, as follows: Up to 40 hrs. in the first year after appointment; and up to 15 hrs. per year thereafter.

Record review: ~~60~~ 50 pp./hr. [As amended Nov. 30, 2005.]

Investigate and present habeas corpus petition: 180-500 hrs.

For all cases:

Informal reply: 50-120 hrs.

Traverse: 50-120 hrs.

b. – c. * * *

(iii) * * *

III. – V. * * *

**GUIDELINES FOR FIXED FEE APPOINTMENTS,
ON OPTIONAL BASIS, TO AUTOMATIC APPEALS AND
RELATED HABEAS CORPUS PROCEEDINGS
IN THE CALIFORNIA SUPREME COURT**

**Adopted by the Supreme Court December 14, 1993,
effective January 1, 1994**

**Amended effective September 1, 1995,
January 1, 1997, January 22, 1997, July 30, 1997, January 22, 1998,
February 4, 1998, July 18, 2001, January 16, 2002,
March 21, 2002, October 1, 2005, and November 30, 2005**

Introduction

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**1. Fixed Fee Categories
for Cases in Which Counsel Is Appointed
to Handle the Appeal and Related
Habeas Corpus/Executive Clemency Proceedings**

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**1.1. Fixed Fee Categories
for Cases in Which Counsel Is Appointed
to Handle the Appeal Only**

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**1.2. Fixed Fee Categories
for Cases in Which Counsel Is Appointed to Handle
Habeas Corpus/Executive Clemency Proceedings Only**

*[Guideline added effective Jan. 22, 1998;
as amended Oct. 1, 2005, and Nov. 30, 2005.]*

Category I: \$75,000, plus an additional fixed fee calculated at the rate of \$130 for every ~~60~~ 50 pages of transcript in the combined record on appeal.

A. Habeas corpus representation related to a case that would fall within Fixed Fee Guideline 1.1, Categories I or II.

B. Habeas corpus representation related to a case that would fall within Fixed Fee Guideline 1.1, Categories III, IV, or V, but that, for case-specific reasons, is of below-average complexity.

Category II: \$97,000, plus an additional fixed fee calculated at the rate of -\$130 for every ~~60~~ 50 pages of transcript in the combined record on appeal.

A. Habeas corpus representation related to a case that would fall within Fixed Fee Guideline 1.1, Categories III , IV, or V.

B. Habeas corpus representation related to a case that would fall within Fixed Fee Guideline 1.1, Categories I or II, but that, for case-specific reasons, nevertheless is of average complexity.

Category III: \$112,000, plus an additional fixed fee calculated at the rate of \$130 for every ~~60~~ 50 pages of transcript in the combined record on appeal, for cases of above-average complexity.

For cases of exceptional complexity, appointed counsel may present a justification at the outset for a fixed fee higher than the \$112,000 base fee.

1.3. Factors Affecting Fee Categories

[Guideline added effective Nov. 30, 2005]

The California Supreme Court considers four factors in determining the fee in fixed fee appointments in capital proceedings: complexity, difficulty, extraordinary costs, and time-intensiveness. The case-specific issues that influence the applicability of these factors often overlap, but examples of such issues include the following:

- Multiple defendants
- Motion for change of venue
- Joint or separate trials with co-defendants
- Multiple homicides or multiple incidents (including multiple victims in separate incidents)
- Mistrials and re-trial(s)
- Substitution of trial counsel; additional trial proceedings or phases (e.g., grand jury, competency phase, sanity phase)
- Multiple special circumstances
- Prior convictions or unadjudicated criminal conduct admitted at penalty phase
- Prosecution's use of informants
- Extensive litigation of the admissibility of evidence
- Forensic testing, analysis, and evidence (e.g., DNA, hair, fingerprint, blood, ballistics) introduced at trial or necessary for habeas investigation
- Mentally ill, mentally impaired, or mentally retarded capital defendants
- Non-English-speaking or foreign national capital defendant
- Non-English-speaking witnesses
- Minimal guilt and/or penalty phase investigation done for trial
- Investigation requirements in multiple locations and/or out of the state or country
- Extended elapsed time since offenses/trial
- Necessity of expert witnesses
- Necessity of using some fees to cover investigative and incidental expenses
- Length of record
- Number of trial witnesses

1.4. Suggested Format and Contents of Fixed Fee Requests

[Guideline added effective Nov. 30, 2005]

Counsel may submit requests for consideration of a case for a particular fixed fee category. Lengthy letters are not necessary or encouraged. Letters for the most complex cases should not exceed seven pages. A suggested format that will assist the Court in making a fixed fee determination includes the following elements:

Fixed fee request: An opening paragraph stating the fee category and base fee requested, plus additional amounts sought for transcript length and cases of exceptional complexity.

Short summary of the case: This paragraph should not extensively reiterate the facts of the case or the procedural history.

Discussion of the applicability of the four factors to this particular case: An explanation of why the appointed case is particularly complex, difficult, costly, and/or time-intensive.

2. – 12. * * *